

UNITED STATES PATENT AND TRADEMARK OFFICE

Examiner: Luke D. Ratcliff *Docket No.:* 3040 *Art Unit:* 3662

In re:

Applicant: Uwe SKULTETY-BETZ

Serial No.: 10/502,411

Filed: July 23, 2004

REQUEST FOR RECONSIDERATION

June 5, 2007

Commissioner for Patents
P O Box 1450
Alexandria, VA 22313-1450

Sir:

2007. This communication is responsive to the Office Action of March 23,

In the Office Action the Examiner rejected claims 1, 6, 8, 9, and 11 under 35 U.S.C. 102(b) over the patent to Dunne.

Claim 7 was rejected under 35 U.S.C. 103(a) over the patent to Dunne.

Claims 3-5, 10 and 12 were rejected under 35 U.S.C. 103(a) over the patent to Dunne in view of the patent to Heironimus.

After carefully considering the Examiner's grounds for the rejection of the claims, the claims have been retained as they were.

Turning now to the Examiner's rejection of the claims over the art, and in particular as being anticipated by the patent to Dunne, it is respectfully submitted that the Examiner did not take into consideration all features which are defined in the claims.

As for claim 1, the Examiner's recitation of the features of claim 1 on page 2 of the Office Action lacks the feature that the optical transducer, which is capable of being triggered by the position sensor to emit a perceptible signal depending on the special orientation, is a laser that emits light in the visible wavelength range and serves to measure distance.

As was discussed in the previous Amendment, the feature that the laser of the laser module 12 in the patent to Dunne, et al emits laser light in the visible wavelength range is not disclosed in the patent to Dunne. Furthermore, the patent to Dunne does not teach to use the laser of the laser module 12 which serves to measure a distance, also for emitting a signal to inform the user about the actual orientation of the laser module 12.

Thus, it is believed to be clear that the new features of the present invention as defined in claim 1 are not disclosed in this reference, and the present invention as defined in claim 1 clearly and patentably distinguishes from the patent to Dunne.

The Examiner rejected claim 1 over this reference as being anticipated. In connection with this, it is believed to be advisable to cite the decision in *re Lindenman Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the patent to Dunne does not disclose each and every element of the present invention as defined in claim 1, and therefore the

anticipation rejection should be considered as not tenable and should be withdrawn.

The Examiner's analysis of claim 11 lacks the crucial feature that the position sensor, the signal transducer and the laser are integrated in the same housing.

As explained in the previous Amendment, the patent to Dunne does not disclose the feature of a laser, a position sensor for determining the orientation of the measuring device and a signal transducer to inform the user about the orientation, which are integrated in a common housing. In the patent to Dunne the laser is incorporated in the laser module 12, whereas the position sensor and the signal transducer are incorporated in the compass module 14. In other words, the laser is incorporated in a first housing and the position sensor together with the signal transducer are incorporated in a second housing, which is separate from the first housing.

Therefore, it is believed to be clear that the present invention as defined in claim 11 also clearly and patentably distinguishes from the Dunne reference.

On pages 4 and 5 of the Office Action, the Examiner referred to argumentation points which in his opinion were presented by the applicants. However these argumentation points were not brought forward by the applicants in any way.

Referring to the first paragraph on page 5 of the Office Action, the applicants did not argue that the patent to Dunne “does not teach a position sensor”. This is false assertion of the Examiner. On the contrary, as specified on page 13, second paragraph of the Amendment filed December 7, 2006, referring to the patent to Dunne, it was stated that “A tilt sensor and an acoustic signal transducer are integrated in the compass module 14”.

Referring to the second paragraph, the applicants did not argue that “the tilt sensor and the acoustic signal transducer serve primarily to give information about the orientation of the compass module and therefore do not constitute a laser distance measuring device...”

It is therefore believed to be clear that the Examiner misinterpreted the arguments presented by the applicants.

The secondary reference applied by the Examiner in combination with the patent to Dunne, namely the patent to Heironimus also does not teach the new features of the present invention.

In view of the above presented arguments it is believed to be clear that claims 1 and 11 should be considered as patentably distinguishing over the art and should be allowed.

As for the dependent claims, these claims depend on the independent claims, they share their allowable features, and therefore they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,

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